IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9714 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ARJANBHAI MANGABHAI HARIJAN

Versus

DISTRICT MAGISTRATE

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Appearance:

MR AMAR D MITHANI for Petitioner

MR KT DAVE A.G.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/02/2000

ORAL JUDGEMENT

Heard learned advocate Mr. Pravin Gondalia for learned advocate Mr. Amar Mithani for petitioner and learned A.G. P. Mr. K. T. Dave for the respondents Nos. 1, 2 and 3. Leave granted to tender on record the documents, which is part of compilation served to the

petitioner/detenu.

1. The detention order dated 22.3.1999 passed by the respondent No. 1 District Magistrate, Junagadh, in exercise of powers conferred under Section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present proceedings under Article 226 of the Constitution of India.

2. The grounds of detention served upon the detenu under Section 9(1) of the "PASA", copy of which is produced at Annexure - "C", interalia, indicate that four prohibition cases are registered against the petitioner at Gir Gadhada Police Station on 2.6.1998, 24.7.1998, 18.8.1998 and 24.12.1998 respectively. That the country made liquor has been seized in each cases. That the first three cases are pending for trial in the Court, while last case is pending for further investigation.

The grounds of detention further enumerate that six witnesses, on assurance of their anonymity, have supplied information regarding bootlegging activities of the petitioner, vide their statements i.e. statements of four witnesses are recorded on 15.3.1999, wherein, the incident alleged to have occurred on 22.2.1999, prior to 15 days of the statement dated 28.2.1999 and 12.3.1999 are stated, that other two witnesses vide their statements dated 31.12.1998 and 1.2.1999.

3. That on the basis of above stated material, the respondent No. 1 as Detaining Authority has come to the conclusion that the detenu is a "bootlegger" within the meaning of Section 2(b) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activities, and thereby, in order to prevent the petitioner from continuing his such activities, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the impugned order suffers from vice of non application of mind in as much as

(A) The ground of detention disclose that privilege under Section 9(2) of "PASA" is claimed in respect to six of the witnesses, on verification of the fear expressed by the respective witnesses to keep their identity secrete. However, the copies of the statements

supplied with the grounds of detention disclose that none of the statements bear any endorsement that either the Detaining Authority or Dy. S. P. has made any verification of the said statements.

(B) It is alsqo contended that in the grounds of detention, the Detaining Authority has failed to disclose the authority to whom detenu could made representation against his detention.

5. Despite due service of Rule, none of the respondents has filed any affidavit to controvert the averments made in the petition. That on scrutiny of papers, it appears that statements of anonymous witnesses produced at pages Nos. 23 to 37 of the compilation disclose that there is no endorsement of verification. Grounds of detention also disclose that the Detaining Authority has not enumerated the authority to whom the representation could be made by the detenu, at what address. Thus, both the grounds urged on behalf of the petitioner, stand corroborated that the grounds of detention suggest non application of mind on the part of the Detaining Authority and also suggest that by said act, the valuable right of the petitioner conferred under Article 22(5) of the Constitution of India has been infringed and as such, the continued detention of the detenu is also bad in law.

6. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide other contentions raised in the petition.

7. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 22.3.1999 passed by the respondent No. 1 against the petitioner and served on 14.5.1999 is hereby quashed and set aside. The petitioner Arjanbhai Mangabhai Harijan is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

Date : 21.02.2000. ( A. K. Trivedi, J. )

PALLAV.